From: Scott Neugroschl
To: Microsoft ATR
Date: 1/25/02 12:25am
Subject: Microsoft Settlement

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To whom it may concern,

I am submitting this under the Tunney Act, to comment on the Revised Proposed
Final Judgement (RPFJ) in the case of U.S. v. Microsoft.

I am a software engineer with 18 years of professional experience, and over 25
years of computer experience. My belief is that the RPFJ does not fully address the harm caused by Microsoft. Many people, including the Honorable
Robert Bork share this belief (see
http://www.linuxplanet.com/linuxplanet/opinions/4020/1).

In this letter, I would like to give my overall impressions, and then address
a few specific points within the RPFJ.

First, Microsoft was found guilty of violating the Sherman Antitrust Act. As
I understand it, the US Circuit Court of Appeals upheld the guilty verdict;
they merely threw out Judge Jackson's remedies. The Findings of Fact still
stand. Why, then, is the DOJ essentially conceding this case? Do all convicted criminals get to negotiate their own punishment for violating the law?

Second, there are no punitive provisions. Microsoft profited from its illegal
activities. Where is the punishment for the violation of the law? Why should
they be allowed to retain the "fruit of the poisonous tree"? To use lay terms,
the RPFJ reads almost as if Microsoft were saying "We did nothing wrong, and
we won't do it again." In addition, Microsoft has shown that mere

procedural
remedies are insufficient, as shown by its actions in the light of the
1994
consent decree.

Now I would like to discuss some specific provisions of the RPFJ.

Section III.I.5 requires any ISV, IHP, IAP, ICP, or OEM (third party)
that
receives information on Microsoft APIs and protocols to license back to
Microsoft any IP that they create based upon those APIs and protocols.
At
first glance, this appears reasonable. However, Microsoft has a history
of
taking such third party information and abusing it, to extend their
hegemony.
See Stac Electronics v. Microsoft for an example.

Section III.J.2 allows Microsoft to deny licenses to the APIs and
protocols to
any person or entity that does not have a "reasonable business need for
the
API, Documentation or Communications Protocol for a planned or shipping
product" (III.J.2.(b)), or does not meet "reasonable objective standards
established by Microsoft for certifying the authenticity and viability
of its
business" (III.J.2.(c)). First of all, students, who are obviously not
businesses, and do not have "planned or shipping product", develop many
Open
Source projects. Second, the requirement that Microsoft certify the
business
model of its licensees is open to abuse, given Microsoft's official
positions
on Open Source software as a business model. See Craig Mundie's
comments at
http://www.microsoft.com/presspass/exec/craig/05-03sharedsource.asp, and
Jim
Allchin's comments, as reported by C|Net at
http://news.com.com/2100-1001-252681.html.

Section III.J.2.(d) contains yet another onerous provision. It requires
any
licensee to agree to "submit, at its own expense, any computer program
using
such APIs, Documentation, or Communication to third-party verification,
approved by Microsoft, to test for and ensure verification and
compliance with
Microsoft specifications." Again, as stated above, many developers are
not

businesses, and do not have the financial resources to pay for such testing.

In summary, I believe the RPFJ is fatally flawed. I have provided some general comments and three specific comments detailing my reasons for so believing. I urge the Court to reject this settlement. Thank you for your
time and consideration.

Sincerely,

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